

1 **John P. Atkins**
2 **Legal Counsel**
3 **DEPARTMENT OF LABOR AND INDUSTRY**
4 **Office of Legal Services**
5 **301 South Park Avenue**
6 **P.O. Box 200513**
7 **Helena, MT 59620-0513**

8 **Attorney for the Department**

9 **BEFORE THE ADVISORY COUNCIL OF THE LICENSED**
10 **ADDICTION COUNSELOR PROGRAM**
11 **DEPARTMENT OF LABOR AND INDUSTRY**
12 **STATE OF MONTANA**

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| 11 IN THE MATTER OF THE PROPOSED |) | Docket No. CC-04-0138-LAC |
| 12 DISCIPLINARY TREATMENT OF THE |) | |
| 13 LICENSE OF STEVE FAIRBANK, CDC, |) | NOTICE OF SUMMARY SUSPENSION |
| 14 License Number 407. |) | AND OPPORTUNITY |
| |) | FOR HEARING |

15
16 **TO: Steve Fairbank**
17 **758 Blue Slide Road**
18 **Thompson Falls, MT 59873**

19 **PLEASE TAKE NOTICE THAT:**

20 The Review Panel of the Licensed Addiction Counselor Program of the State of
21 Montana (Review Panel) has recommended to the Department of Labor and Industry
22 (Department), and the Department has so found, that reasonable cause exist to believe that you
23 have committed acts and/or omissions that authorize the Department to take disciplinary action
24 against your right to hold a license as a licensed addiction counselor in the State of Montana,

25 Notice of Summary Suspension and Opportunity for Hearing
26 Steve Fairbank, CC-04-0138-LAC

ORIGINAL

1 pursuant to the provisions of §§2-4-631(3), 37-1-316(18), 37-35-301(5), Montana Code
2 Annotated (MCA), and ARM 8.11.120(2).

4 REASONS FOR ACTION

5 The Department has considered information presented to it by the Review Panel of the
6 Licensed Addiction Counselors' Program in making its reasonable cause finding. The
7 following Fact Assertions and Conclusions summarize the allegations upon which the
8 Department has authorized the issuance of a Notice of Summary Suspension and Opportunity
9 for Hearing.

11 FACT ASSERTIONS

12 (1) That at all times relevant to this proceeding, Licensee was a licensed addiction
13 counselor, License No. 407, licensed by the Montana Licensed Addiction Counselor Program
14 and its predecessor the Certified Chemical Dependency Program;

15 (2) That Licensee is an officer, shareholder and co-director, along with Licensee's
16 spouse, Jill Fairbank, of Building Bridges, Inc., a Montana corporation which provides a
17 cognitive behavioral program for youths in Thompson Falls, County of Sanders, State of
18 Montana;

19 (3) That on or about August 4, 2000, Licensee and a female minor (KJM), age
20 seventeen years, who was a resident in Licensee's Building Bridges, Inc., program, had gone to
21 the local gym to exercise. After Licensee and KJM had finished exercising, they returned to
22 the Building Bridges' facility and showered. Licensee showered first while KJM checked a
23 mousetrap at the request of Licensee. KJM then showered, however, as KJM was drying
24 herself off, she noticed Licensee's shaving kit in the dressing room and what appeared to be a

1 camera lens aimed at the dressing room partially concealed in Licensee's shaving kit. KJM
2 then left the dressing room; went to her room to change clothes; and then returned to the
3 dressing room to examine Licensee's shaving kit and the camera she had observed. When KJM
4 returned to the dressing room, the shaving kit and camera were gone;

5 (4) That upon not being able to locate Licensee's shaving kit, KJM told Licensee that
6 she was ready for work. Licensee inquired of KJM about a bikini she had; requested KJM to
7 put it on; and further instructed KJM to pose for some pictures that he (Licensee) wanted to
8 take with his camera;

9 (5) That KJM put on her bikini and posed in several sexually provocative positions
10 while Licensee took pictures of KJM. Licensee then instructed KJM to put on a short skirt and
11 again took several sexually provocative photos of KJM. This procedure was repeated again
12 with KJM now dressed in a pair of short shorts. During these photo sessions, Licensee
13 "adjusted" KJM's bikini top and, in the process, touched or rubbed KJM's breasts. During this
14 time, Licensee also grabbed, stroked or patted KJM's buttocks. Licensee paid KJM the sum of
15 Twenty and No/100 Dollars (\$20.00) for posing for him and advised KJM that she would make
16 a very successful topless model;

17 (6) That KJM reported the above-recited events and Licensee was subsequently
18 charged in the Justice Court of Sanders County, Montana, with two counts of Sexual Contact
19 Without Consent, in violation of Section 45-5-502, MCA, both misdemeanors. Licensee
20 entered into a "Waiver and Agreement to Defer Prosecution", dated December 27, 2000, with
21 the Sanders County Attorney wherein he admitted to the offenses charged on the date alleged;

22 (7) That in the course of investigating the criminal complaint filed by KJM against
23 Licensee, members of the Sanders County Sheriff's Department obtained and executed a search
24 warrant at Licensee's residence on August 6, 2000, of the Building Bridges facilities wherein

1 they recovered several adult magazines; separate pages from adult publications of semi-nude
2 models; and the Twenty and No/100 Dollars (\$20.00) paid by Licensee to KJM for posing. No
3 photographs were recovered. Licensee told the Sheriff's deputies that the photographs had
4 turned out poorly and that he (Licensee) had thrown them away;

5 (8) That on March 10, 2003, the Review Panel voted unanimously to require
6 Licensee:

7 " . . . to participate in a psychosexual evaluation by a
8 Department approved professional to determine the
9 level of risk he poses to the public with the report
10 submitted to the Department . . . within 90 days."

11 (9) That although Licensee did obtain a psychosexual evaluation, Licensee has refused
12 to authorize his "approved professional" to release a copy of that evaluation to the Review
13 Panel

14 (10) That the Review Panel and the Department are without any means to assess or
15 evaluate the level of risk that licensee poses to female residents of his Building Bridges
16 program or other members of the public without being able to review the psychosexual
17 evaluation report of Licensee's "approved professional"; and

18 (11) That the level of risk that Licensee presents to residents of his Building Bridges
19 program, or other members of the public, is unknown at this time. However, what is known is
20 that Licensee, who was twenty-eight (28) years older than KJM on August 4, 2000, admitted
21 that he took inappropriate sexual liberties, without consent, of a female resident of his cognitive
22 behavioral program while in a position of authority and influence and in his professional
23 capacity; paid KJM for posing in sexually provocative positions; and pornographic materials
24 were recovered from Licensee's residence.

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CONCLUSIONS

From the foregoing Fact Assertions, the Board concludes:

A. That the Licensed Addiction Counselor Program has jurisdiction over the Licensee and the subject matter herein pursuant to Sections 37-1-403, 37-35-103 and 37-35-201, MCA;

B. That the admitted sexual conduct of Licensee with KJM on August 4, 2000; together with the disparity in age between Licensee and KJM; the pornographic magazines recovered from Licensee's residence; and the refusal of Licensee to release the psychosexual evaluation report of his "approved professional" to the Review Panel constitutes grounds to conclude that the public health, safety and welfare imperatively requires emergency action in regard to Licensee's license as a licensed addiction counselor in the form of summary suspension of Licensee's license pending proceedings for revocation or other action as deemed appropriate.

C. That the acts and conduct of Licensee on August 4, 2000, with KJM constitute a violation of Section 37-1-316(18), MCA, and ARM 8.11.120(2) and subject Licensee to summary suspension of his license pursuant to Section 2-4-631(3), MCA, and the sanctions provided for in Section 37-1-312, Montana Code Annotated, pursuant to the authority granted by Section 37-35-301(5), MCA;

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SUMMARY SUSPENSION ORDER

Pursuant to Section 2-4-631(3), Montana Code Annotated, the Department of Labor and Industry finds, from the facts and matters recited above, that the public health, safety and welfare imperatively requires the summary suspension of Licensee's license as a licensed addiction counselor. Therefore:

1 **IT IS HEREBY ORDERED** that Licensee's license as a licensed addiction counselor in
2 the State of Montana, License No. 407, is immediately and summarily suspended for an
3 indefinite period pending further proceedings in this matter. Licensee is instructed, pursuant to
4 Section 37-1-312(4), MCA, to surrender his License No. 407 to the Health Care Licensing
5 Bureau, Department of Labor and Industry within twenty-four (24) hours of receipt of this
6 Notice by mailing it or personally delivering it to:

7 Lisa Addington, Bureau Chief
8 Health Care Licensing Bureau
9 301 South Park
 P.O. Box 200513
 Helena, MT 59620-0513

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11 **UNIFORM PROFESSIONAL LICENSING AND REGULATION PROCEDURES**

12 You are advised that the law provides:

13 **37-1-309. Notice -- request for hearing.** (1) If a reasonable cause determination is
14 made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared
15 by department legal staff and served on the alleged violator. The notice may be served by
16 certified mail to the current address on file with the (program administrator) or by other means
17 authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a
18 particular statute, rule, or standard unless the (program's review panel), if one has been
19 established, has made a written determination that there are reasonable grounds to believe that
20 the particular statute, rule, or standard has been violated.

17 (2) A licensee or license applicant shall give the (program administrator) the licensee's
18 or applicant's current address and any change of address within 30 days of the change.

18 (3) The notice must state that the licensee or license applicant may request a hearing to
19 contest the charge or charges. A request for a hearing must be in writing and received in the
20 offices of the department within 20 days after the licensee's receipt of the notice. Failure to
request a hearing constitutes a default on the charge or charges, and the (Department) may
enter a decision on the basis of the facts available to it.

21 **37-1-312. Sanctions -- stay -- costs -- stipulations.** (1) Upon a decision that a
22 licensee or license applicant has violated this part or is unable to practice with reasonable skill
23 and safety due to a physical or mental condition or upon stipulation of the parties as provided in
subsection (3), the (Department) may issue an order providing for one or any combination of
the following sanctions:

24 (a) revocation of the license;

25 (b) suspension of the license for a fixed or indefinite term

- 1 (c) restriction or limitation of the practice;
2 (d) satisfactory completion of a specific program of remedial education or treatment;
3 (e) monitoring of the practice by a supervisor approved by the disciplining authority;
4 (f) censure or reprimand, either public or private;
5 (g) compliance with conditions of probation for a designated period of time;
6 (h) payment of a fine not to exceed \$1,000 for each violation. Fines must be
7 deposited in the state general fund.
8 (i) denial of a license application;
9 (j) refund of costs and fees billed to and collected from a consumer.
10 (2) A sanction may be totally or partly stayed by the (Department). To determine which
11 sanctions are appropriate, the (Department) shall first consider the sanctions that are
12 necessary to protect or compensate the public. Only after the determination has
13 been made may the (Department) consider and include in the order any
14 requirements designed to rehabilitate the licensee or license applicant.
15 (3) The licensee or license applicant may enter into a stipulated agreement resolving
16 potential or pending charges that includes one or more of the sanctions in this
17 section. The stipulation is an informal disposition for the purposes of 2-4-603.
18 (4) A licensee shall surrender a suspended or revoked license to the (Department)
19 within 24 hours after receiving notification of the suspension or revocation by
20 mailing it or delivering it personally to the (Department).
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STATEMENT OF RIGHTS

13 You are entitled to a hearing as provided for by the Montana Administrative Procedure
14 Act, § 2-4-601, MCA, and following, including 2-4-631, MCA, and by §37-1-121(1); 37-1-
15 403; and 37-1-404, MCA. You have a right to be represented by an attorney at such hearing
16 and during related proceedings.

17 If you want to have a hearing and to resist the proposed action under the jurisdiction of
18 the Department, you must so advise Lisa Addington, Bureau Chief, Health Care Licensing
19 Bureau, Department of Labor and Industry, 301 South Park, P.O. Box 200513, Helena,
20 Montana 59620-0513, **in writing**. Your request must be received in the offices of the
21 Department within twenty (20) days after your receipt of this notice.
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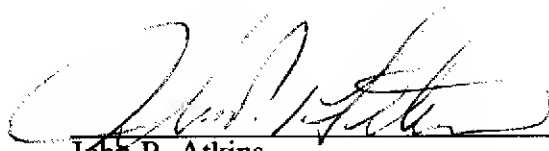
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POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your request for a hearing within the time specified will result in the entry of a default order imposing any sanction or sanctions authorized by law without additional prior notice to you.

DATED this 7th day of April, 2004.


John P. Atkins
Legal Counsel
Department of Labor and Industry

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2004, I served a true and accurate copy of the foregoing, by certified U.S. mail, certified number 7001 2510 CCL1 1003 4519, postage prepaid, upon the Licensee, addressed as follows:

Steve Fairbank
758 Blue Slide Road
Thompson Falls, MT 59873



Notice of Proposed Board Action and Opportunity for Hearing
David Fenton,

1 **BEFORE THE ADVISORY COUNCIL OF THE LICENSED**
2 **ADDICTION COUNSELOR PROGRAM**
3 **DEPARTMENT OF LABOR AND INDUSTRY**
4 **STATE OF MONTANA**

5 **IN THE MATTER OF THE PROPOSED**
6 **DISCIPLINARY TREATMENT OF THE**
7 **LICENSE OF STEVE FAIRBANK, CDC,**
8 **License No. 407.**

Docket No. CC-04-0138-LAC
Hearings Bureau Case No. 2455-2004

STIPULATION

9 The Professional and Occupational Licensing Division of the Department of Labor and
10 Industry of the State of Montana (Department), by and through its legal counsel, and Steve
11 Fairbank (Licensee), a licensed addiction counselor, represented by Peter A. Leander, attorney
12 at law, Bigfork, Montana, hereby stipulate and agree as follows:

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14 **STIPULATION**

15 1. That licensee, Steve Fairbank, was previously licensed to act as a licensed addiction
16 counselor in the State of Montana. Licensee's license number was 407. Licensee's license was
17 summarily suspended effective April 12, 2004, pursuant to Notice of Summary Suspension and
18 Opportunity for Hearing dated April 6, 2004. Licensee's most recent application to renew has
19 license was denied due to the summary suspension of his license. Licensee is not currently
20 licensed at this time.

21 2. Information has been brought and filed charging Licensee with conduct constituting
22 grounds for disciplinary action.

23 3. The Licensed Addiction Counselor Program has a statutory obligation to protect the
24 public health, welfare and safety under Mont. Code Ann. §37-35-201.

25 4. Licensee admits the jurisdiction of the Advisory Council of the Licensed Addiction
26 Counselor Program over Licensee and over the subject matter of the complaint even though
27 Licensee is not currently licensed at this time. Section 37-1-141, M.C.A., and Gilpin v. Board
28 of Nursing, et al., 254 Mont. 308, 837 P.2d 1342 (1992). Licensee desires to avoid

1 unnecessary expenditure of time and other valuable resources in resolving the issues in this
2 action. Therefore, Licensee specifically waives a contested case hearing and all rights to
3 appeal under the Montana Administrative Procedure Act, and elects to resolve this matter on
4 the terms and conditions set forth herein.

5 5. Licensee acknowledges that Licensee has read and understands each term of this
6 Stipulation and the Notice of Summary Suspension and Opportunity for Hearing issued in this
7 matter. Licensee acknowledges that Licensee enters into this Stipulation voluntarily and
8 without reservation. Licensee acknowledges that no promises, other than those contained
9 herein, and no threats have been made by the Department or by any member, officer, agent or
10 representative of the Department to induce Licensee to enter into this Stipulation.

11 6. Based upon the complaint and its investigation of the complaint, the Department
12 contends as set forth in its Fact Assertions and Conclusions sections of the Notice of Summary
13 Suspension and Opportunity for Hearing issued in this matter. The Department specifically
14 contends that Licensee's conduct, as alleged in the Notice of Summary Suspension and
15 Opportunity for Hearing constitutes grounds for disciplinary action against Licensee's license.
16 The Department acknowledges that it is in receipt of a summary Psychological/Psychosexual
17 Evaluation performed by Michael J. Scolatti, Ph.D, of Missoula, Montana, dated June 29,
18 2004, which determined that Licensee was "a low risk to sexually reoffend."

19 7. The Department and the Licensee agree that this Stipulation shall be a final
20 compromise and settlement of the grounds for Licensee's summary suspension and non-
21 renewal of Licensee's license as a licensed addiction counselor arising out of Licensee's
22 conduct alleged in the Notice of Summary Suspension and Opportunity for Hearing in the
23 above-captioned matter.

24 8. The Department and the Licensee agree that the Notice of Summary Suspension and
25 Opportunity for Hearing, this Stipulation, and the subsequent Final Order are all public
26 documents, pursuant to Mont. Code Ann. §§37-1-405(2) and 2-4-623.

27 9. The Department and Licensee stipulate and agree that:

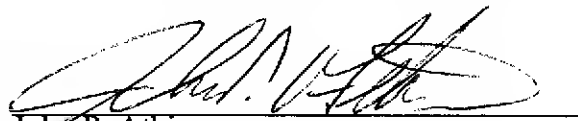
28 (A) That Licensee shall be permitted to apply for reinstatement/renewal of
his licensed addiction counselor license immediately upon entry of a Final Order in this matter

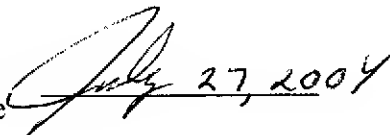
1 without incurring the late renewal fee provided for in ARM 8.11.101, if otherwise qualified;

2 (B) That Licensee shall be placed on probation for a period of Two (2) years
3 from the date of the Final Order in this matter; and

4 (C) That Licensee's practice as a licensed addiction counselor shall be limited
5 to MALES ONLY.


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7 **This agreement is subject to final approval by the Advisory Council for the Licensed
8 Addiction Counselor Program and the Department of Labor and Industry.**

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10 
11 John P. Atkins
12 Legal Counsel
13 Department of Labor and Industry

Date  27, 2004

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15 Steve Fairbank
16 Licensee

Date 7-15-04

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18 Peter A. Leander
19 Attorney for Licensee

Date 7-11-04

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4 **BEFORE THE ADVISORY COUNCIL OF THE LICENSED**
5 **ADDICTION COUNSELORS PROGRAM**
6 **STATE OF MONTANA**

7 **IN THE MATTER OF THE PROPOSED**
8 **DISCIPLINARY TREATMENT OF THE**
9 **LICENSE OF STEVE FAIRBANK,**
10 **License No. 407.**

} **Docket No. CC-04-0138-LAC**
} **Hearings Bureau Case No. 2455-2004**
}

} **FINAL ORDER**
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11 **Based upon the foregoing Stipulation of the parties to this action, and other good**
12 **cause appearing therefore,**

13 **IT IS HEREBY ORDERED that the Stipulation between the parties is incorporated**
14 **herein by reference and the disciplinary action contained therein shall be binding on**
15 **Licensee and constitute the Final Order of the Licensed Addiction Counselors Program.**

16 **DATED this** 10 **day of** August **, 2004.**

17 **DEPARTMENT OF LABOR AND INDUSTRY**

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20 **By:**


21 **Jim Brown, Division Administrator**
22 **Business Standards Division**
23 **Department of Labor and Industry**
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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on the 10th day of August, 2004, I served a true and
5 accurate copy of the foregoing Final Order, by U.S. mail, postage prepaid, upon Licensee and
6 Licensee's counsel of record, addressed as follows:

7
8 Steve Fairbank
9 758 Blue Slide Road
10 Thompson Falls, MT 59873

Peter A. Leander
Attorney at Law
Osborn Landing
443 Osborn Avenue, Suite 108
Bigfork, MT 59911

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13 Becky Salminen
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